U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29886170

Date: FEB. 5, 2024

Motion on Administrative Appeals Office

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a martial artist, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition in November 2018, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. We dismissed the Petitioner's appeal and seven subsequent motions. The matter is again before us on a combined motion to reopen and motion to reconsider.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the combined motions.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We do not require the evidence of a "new fact" to have been previously unavailable or undiscoverable. Instead, "new facts" are facts that are relevant to the issue(s) raised on motion and that have not been previously submitted in the proceeding, which includes the original petition. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts."

A motion to reconsider is based on an incorrect application of law or policy.[1] 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

As we have stated in our prior decisions, motions for the reopening or reconsideration of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial

[1] The Board of Immigration Appeals (BIA) generally provides that a motion to reconsider asserts that at the time of the previous decision, an error was made. It questions the decision for alleged errors in appraising the facts and the law. The

on the basis of newly discovered evidence. *See INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110.

By regulation, the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). Therefore, the filing before us is not a motion to reopen and reconsider the denial of the petition. Instead, it is a motion to reopen and reconsider our most recent decision, the July 19, 2023, dismissal of the Petitioner's seventh motion. Therefore, we cannot consider new objections to the earlier denial, and the Petitioner cannot use the present filing to make new allegations of error at prior stages of the proceeding.

On motion, the Petitioner submits a statement, and no other evidence, asserting his eligibility for first preference classification as a martial artist of extraordinary ability. In his statement, the Petitioner asserts that, based on our prior decisions in these proceedings, we "are not willing to recognize Kickboxing and Muay Thai as a part of Martial Arts Sports." The Petitioner goes on to provide information and history for both sports and requests that we reconsider his awards. Finally, he states that a letter of support that he previously submitted misrepresented his participation in an event as a referee rather than a judge due to an error in translation. The Petitioner does not specifically identify which support letter he is referencing, nor does he provide a new translation to correct the alleged error. The Petitioner's statement generally asserts his eligibility for an extraordinary ability visa, but does not explain or point to any factual, legal or policy error in our July 19, 2023, decision.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen or reconsider to instances where the Petitioner has shown "proper cause" for that action. Thus, to merit reopening or reconsideration, a petitioner must not only meet the formal filing requirements (such as submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

Therefore, we will dismiss his motion to reopen because he has not provided documentary evidence of new facts related to our prior decision. *See* 8 C.F.R. § 103.5(a)(2). In addition, we will dismiss the Petitioner's motion to reconsider because he does not establish that we erred in our July 19, 2023, decision. *See* 8 C.F.R. § 103.5(a)(3).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

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very nature of a motion to reconsider is that the original decision was defective in some regard. *See Matter of Cerna*, 20 I&N Dec. 399, 402 (BIA 1991).